

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SANDRA THOMAS, ON BEHALF OF
TERRELL THOMAS,

No C-04-01276 VRW

Plaintiff

ORDER

v

JO ANNE B BARNHART, COMMISSIONER
OF SOCIAL SECURITY,

Defendant.

Plaintiff Sandra Thomas, the mother and legal guardian of Terrell Thomas ("Terrell"), appeals from the decision of the Social Security Administration ("SSA") denying Terrell social security disability benefits. Plaintiff contends that the SSA erred in concluding that Terrell did not have attention deficit hyperactivity disorder ("ADHD") and in failing to have a pediatrician or other appropriate specialist evaluate Terrell's entire record. The court considers cross motions for summary judgment. Pl Mot (Doc # 5); Def Mot (Doc # 6). Based upon review

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1 of the administrative record, the court DENIES plaintiff's motion
2 and GRANTS defendant's motion.

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4 I

5 A

6 Terrell is an eleven-year-old boy born on June 4, 1994.
7 Administrative Record ("AR") (Doc # 4) at 231. Terrell has a
8 history of medical conditions, including renal tubular acidosis
9 ("RTA") and craniosynostosis, and plaintiff alleges that Terrell
10 has learning disabilities and ADHD. AR at 335-36. Terrell
11 currently attends elementary school in Oakland. AR at 338.
12 Terrell has a twin brother who also has RTA but does not suffer
13 from craniosynostosis, learning disabilities or ADHD. AR at 72.

14 Terrell was diagnosed with RTA in October 1994 after
15 experiencing developmental difficulties in the months after his
16 birth. AR at 83. RTA is a condition in which the kidneys fail to
17 process sodium bicarbonate properly. Daily supplements of sodium
18 bicarbonate effectively manage RTA; Terrell took sodium bicarbonate
19 supplements until he was five. AR at 155, 324. Terrell does not
20 currently experience adverse symptoms from RTA. AR at 237.

21 Terrell underwent surgery to correct his craniosynostosis
22 on March 12, 1997. AR at 137. Craniosynostosis is a condition in
23 which plates of the skull fuse together, producing an irregularly-
24 shaped skull. AR at 34. In August 1997, Terrell underwent an
25 additional surgery to remove hardware that was causing irritation
26 in the site of the original surgery. Id. A prominent scar runs
27 across the front of Terrell's skull from ear to ear and his skull
28 remains irregularly shaped. AR at 167, 196-97. Terrell does not

1 suffer any medical complications from craniosynostosis or the
2 surgeries, although peers allegedly tease Terrell about the scar
3 and shape of his head. AR at 233.

4 Consulting pediatrician Julian Davis, MD, examined
5 Terrell in October 1997 at the request of the SSA and found Terrell
6 to be delayed compared to most children his age and his twin
7 brother in particular. AR at 144. Dr Davis was able to compare
8 Terrell with his twin brother; Terrell's twin had clearer speech
9 and could balance on one foot, unlike Terrell. Id. Dr Davis
10 concluded that Terrell's prospects for normal development were good
11 with appropriate therapy and educational experience. Id.

12 Consulting psychologist Cecilia Hardey, PhD, attempted to
13 examine Terrell in February 1998 but was unable to complete a full
14 examination because of Terrell's behavior. AR at 167. Terrell
15 screamed, hit, called the examiner "dummy" and "stupid" and
16 "completely refused to participate in all but a few of the tasks
17 required." AR at 167, 169. Dr Hardey administered the McCarthy
18 Scales of Children's Abilities to Terrell. AR at 169. Terrell
19 scored below the first percentile on all the test's subparts, but
20 Dr Hardey did not consider the test scores to be "an adequate
21 reflection of this youngster's cognitive and developmental
22 abilities" because of Terrell's lack of cooperation. Id. Dr
23 Hardey tentatively concluded that Terrell had borderline to low
24 average intelligence and recommended guidance and possibly
25 behavioral counseling to equip plaintiff with better parenting
26 skills. AR at 170.

27 Consulting psychologist Joanna Koulianos, PhD, examined
28 Terrell in January 2002 at the request of the SSA and found that

1 Terrell had normal communication, social and motor skills, as well
2 as adequate intelligence and ability to pay attention and
3 concentrate. AR at 320. Dr Koulianos administered a complete
4 psychological evaluation in addition to the Wechsler Intelligence
5 Scale for Children - III ("WISC-III") and Vineland Adaptive
6 Behavior Scales ("VABS") tests. Terrell's performance on the WISC-
7 III test placed his IQ at 78, which Dr Koulianos regarded as
8 adequate. AR at 320, 322. The VABS test found that Terrell was
9 delayed in several areas. Terrell, who was 7.7 years old at the
10 time of the test, had an age equivalency of 5.11 in his
11 communication abilities, 5.10 in his daily living skills and 5.3 in
12 his socialization skills. AR at 322. While these results were
13 "moderately low," Dr Koulianos again described them as adequate.
14 AR at 320. Dr Koulianos noted that plaintiff's description of
15 Terrell's behavior raised a suspicion of ADHD, but "no compelling
16 evidence" substantiated such a finding. AR at 321. Dr Koulianos
17 recommended a behaviorally-based management program to address
18 Terrell's behavioral difficulties. Id.

19 Consulting clinical psychologist Kate Mountain, PhD,
20 examined Terrell in May 2002. AR at 324-29. Dr Mountain found
21 that Terrell had borderline to low average intellectual abilities
22 and found language problems consistent with language-based learning
23 disorder. AR at 328. Dr Mountain administered an impressive
24 battery of tests, including: the WISC-III test, the Wechsler
25 Individual Achievement Test ("WIAT"); a developmental
26 neuropsychological assessment ("NEPSY"); the Individual Variables
27 of Attention Continuous Performance Test ("IVA"); the BEERY Test of
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1 Visual Motor Integration; and the California Verbal Learning Test:
2 Children's Version ("CVLT-C"). AR at 324.

3 Terrell's performance on the WISC-III test placed his IQ
4 at 81, slightly higher than the WISC-III administered by Dr
5 Koulianos. AR at 326. Terrell scored at or around the mean on the
6 WISC-III subparts testing arithmetic, digit span and picture
7 arrangement and around two standard deviations below the mean on
8 comprehension and visual spatial skills. Id. On the WIAT, Terrell
9 scored near or slightly below average on all the subtests; all his
10 scores were within two standard deviations of the mean, with
11 several approaching the mean. AR at 327. On the NEPSY, Terrell
12 scored two to three standard deviations below mean on several
13 verbal subtests.

14 Dr Mountain interpreted Terrell's test results as
15 indicative of "significant weaknesses in phonological processing"
16 and likely "phonological deficits." Id. Terrell also performed
17 poorly on the visual motor skills test; Dr Mountain found Terrell's
18 abilities to be equivalent to those of an average 5-year-old and
19 concluded that poor visual motor skills, as reflected in
20 difficulties with handwriting, could account for Terrell's
21 "reluctance to do his schoolwork and homework." AR at 328.

22 Terrell also demonstrated problems with auditory
23 attention, although he performed adequately in the auditory
24 attention section of the NEPSY and fair in the planning and
25 response control subtests of the IVA. Id. On the IVA, "a
26 computerized continuous performance measure of visual and auditory
27 attention, Terrell had significant problems." Id. Dr Mountain
28 found the test results and plaintiff's descriptions of Terrell's

1 behavior to be consistent with symptoms of ADHD, although these
2 symptoms were not evident in all situations, such as when Terrell
3 was presented with small amounts of information. Id.

4 Dr Mountain recommended changes in Terrell's school
5 environment and provided plaintiff with a list of several resources
6 for parents of children with ADHD. AR at 329. Dr Mountain also
7 suggested that Terrell's parents discuss a "trial of stimulant
8 medication for the symptoms of ADHD." Id. Dr Sheldon Orloff,
9 Terrell's treating physician, later prescribed Terrell Ritalin, a
10 medication to treat the symptoms of ADHD. AR at 225.

11 Shelby Irwin, Terrell's second grade teacher, completed a
12 questionnaire about Terrell's school performance on January 1,
13 2002. AR at 301-8. Irwin wrote that Terrell had a short attention
14 span and low skill levels in reading and language arts, but
15 otherwise Terrell was like any other child in the classroom and was
16 "a normal functioning child." AR at 308.

17 The Oakland Unified School District assessed Terrell for
18 several weeks in October 2002 to determine whether Terrell
19 qualified for an "individualized education program" ("IEP") -
20 essentially, special education - and, if so, what Terrell's IEP
21 would include. AR at 195-224. This assessment, the most thorough
22 evaluation of Terrell in the administrative record, consisted of a
23 battery of eight tests, a review of Terrell's medical record and
24 observations from Terrell's third-grade general education teacher,
25 a special education teacher, a speech therapist and a psychologist.
26 AR at 213. The IEP team, writing in a report issued October 23,
27 2002, determined that Terrell would benefit from 105 minutes daily
28 with a special education teacher and structured academic goals for

1 the following year. AR at 210-14. Terrell generally performed
2 well on tests of arithmetic and verbal reasoning and generally
3 performed poorly on spatial memory, general memory, reading
4 comprehension and basic reading tests. The IEP team attributed
5 Terrell's difficulties to a disorder in Terrell's visual
6 processing. AR at 215.

7 Concerning Terrell's ability to pay attention, the IEP
8 team found Terrell to be easily "distractible and fidgety"
9 throughout the assessment. AR at 203, 220, 224. Terrell's third
10 grade teacher described Terrell as "typically easily distracted"
11 and that proximity to the front of the room "does not have an
12 effect on his distractability." AR at 199. No conclusion was
13 reached regarding whether Terrell had ADHD.

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15 B

16 Plaintiff applied for Child's Supplemental Security
17 Income disability benefits on behalf of Terrell in June 1997. AR
18 at 71-74. The SSA denied the application initially and upon
19 reconsideration. AR at 47-55. Plaintiff requested a hearing
20 before an administrative law judge ("ALJ") which was held on
21 February 11, 1999. Plaintiff and nonexamining consulting
22 pediatrician Gerhard Nellhaus, MD, testified. AR 17-44. Dr
23 Nellhaus found that Terrell's RTA and craniosynostosis were under
24 control. Also, Dr Nellhaus concluded that Terrell had "neither a
25 marked nor an extreme limitation anywhere," despite minor
26 developmental delays. AR at 39. The ALJ denied the application
27 and the SSA Appeals Council denied review, making the ALJ's
28 decision final. AR at 3-4, 7-15. Plaintiff filed a lawsuit in

1 this court challenging the ALJ's decision. Pursuant to stipulation
2 between the parties, this court remanded the case for further
3 development of the record. AR at 238-39.

4 On remand additional evidence was entered into the record
5 and a hearing was held on June 27, 2002. AR at 323-29. Plaintiff
6 and nonexamining consulting pediatrician Moses Grossman, MD,
7 testified at the hearing. AR at 330-55. Dr Grossman's curriculum
8 vitae, stated by the ALJ to be part of the administrative record,
9 is absent from the records provided to the court. In the absence
10 of that document, the court takes notice of the public record of Dr
11 Grossman's credentials as published in the United States
12 Representative Nancy Pelosi's tribute to Dr Grossman before the
13 October 5, 1989, opening of the Moses Grossman Child Protection
14 Center at San Francisco General Hospital, which reflects that Dr
15 Grossman was the former chief of pediatrics at San Francisco
16 General Hospital and a professor of pediatrics at the University of
17 California, San Francisco School of Medicine since 1951. 135 Cong
18 Rec E 3303.

19 Dr Grossman reviewed Terrell's entire medical record
20 available as of June 27, 2002, including the reports of the doctors
21 treating Terrell following his surgery, the reports of Dr Davis, Dr
22 Hardey and Dr Koulianos and the questionnaire completed by
23 Terrell's second grade teacher. AR at 348. Concerning whether
24 Terrell had ADHD, Dr Grossman said that Terrell "clearly does not
25 meet the very strict definition of attention deficit disorder
26 either medically or in the listings, either way." AR at 349. Dr
27 Grossman also "did not think that [Terrell] met the listings or
28 equaled them or functionally equaled them based on the record and

1 including what [plaintiff] said," although he did express interest
2 in seeing the next psychological report. AR at 353.

3 Shortly after the hearing, plaintiff submitted Dr
4 Mountain's report to the ALJ. The ALJ reviewed Terrell's medical
5 history, including Dr Mountain's report, and denied the application
6 on December 5, 2002. AR at 227-37.

7 The ALJ conducted a three-step evaluation to determine
8 whether Terrell qualified for benefits. The ALJ asked: (1)
9 whether the claimant has engaged in substantial gainful activity;
10 (2) whether the claimant has a medically determinable impairment
11 that is "severe" within in the meaning of the regulations and has
12 lasted or is expected to last more than twelve months or end in
13 death; and (3) whether the claimant has an impairment which "meets,
14 medically equals, or functionally equals" one of the listed
15 impairments described in Appendix 1 of the regulations. 20 CFR §
16 416.924(b-c); 20 CFR, Part 404, Subpart P, Appendix 1. Applying
17 the three-step evaluation to Terrell, the ALJ found that: (1)
18 Terrell has never engaged in substantial gainful activity; (2)
19 Terrell has several severe impairments, including RTS,
20 craniosynostosis and language-based learning disorder; and (3) none
21 of Terrell's impairments meets, equals, or functionally equals any
22 of the listed impairments in Appendix 1. AR at 232.

23 In evaluating whether Terrell's impairments functionally
24 equal any of the listed impairments in Appendix 1, the ALJ
25 considered whether Terrell is "markedly impaired" in two domains of
26 functioning or "extremely impaired" in just one pursuant to 20 CFR
27 § 416.926a. AR at 232. The domains of functioning are: (1)
28 acquiring and using information; (2) attending and completing

1 tasks; (3) interacting and relating with others; (4) moving about
2 and manipulating objects; (5) caring for oneself; and (6) health
3 and physical well-being. 20 CFR § 416.926a. The ALJ accepted the
4 testimony of Dr Grossman that Terrell was not markedly or extremely
5 impaired in any of the domains of functioning. AR at 232.

6 In his decision, the ALJ wrote that he "appreciate[d] the
7 fact that the claimant has some problems, but disability requires
8 more than that. I feel confident in concluding that he is not
9 'disabled' on the information before me." AR at 236. The ALJ
10 acknowledged the portions of Terrell's medical records that
11 supported plaintiff's claim, including Dr Davis's finding that
12 Terrell was developmentally delayed, Dr Koulianos' observation that
13 Terrell performed poorly on certain tests and Dr Mountain's
14 conclusions that Terrell had language-based learning disorder and
15 exhibited symptoms of ADHD. AR at 233-34.

16 The ALJ also discussed the plentiful evidence that
17 Terrell is not disabled within the meaning of the Social Security
18 Act. The ALJ referenced Dr Davis's view that Terrell's prognosis
19 for overcoming his developmental delays was "probably good with
20 appropriate therapy," Dr Koulianos' finding that Terrell was normal
21 or adequate in every area tested and Dr Mountain's finding that
22 Terrell's symptoms of ADHD were inconsistent. Id.

23 The ALJ concluded from his observations at the June 27,
24 2002, hearing and from the reports of Dr Hardey and Dr Koulianos
25 that Terrell's problems were mostly behaviorally-based and would be
26 addressed most properly by a behavioral program for Terrell and
27 better parenting skills for plaintiff. AR at 235. The ALJ
28 "believe[d] that it would be good or healthy for [Terrell] to be

1 encouraged to function appropriately, and that it would not be good
2 for him if he were encouraged to behave as though he were disabled
3 or functionally disturbed." AR at 236 (emphasis in original).

4 Plaintiff requested review and submitted Dr Orloff's
5 prescription for Ritalin and the Oakland Unified School District's
6 October 23, 2002, IEP assessment to the SSA Appeals Council. AR at
7 195-225. The Appeals Council denied the request for review, making
8 the ALJ's decision final. AR at 192-93.

9 On April 4, 2004, plaintiff filed this action seeking
10 review of the SSA's denial of her application. Plaintiff alleges
11 that Terrell is disabled and entitled to benefits because of RTS,
12 craniosynostosis, language-based learning disorder and ADHD.
13 Plaintiff contends that the final decision of the ALJ is in error
14 because: (1) the ALJ's finding that Terrell did not have ADHD is
15 not supported by substantial evidence in the record as a whole; (2)
16 the ALJ failed to consider the effects of ADHD on Terrell's
17 functioning; and (3) the ALJ committed legal error by failing to
18 make a reasonable effort to obtain a case evaluation, based on the
19 record in its entirety, from a pediatrician or other appropriate
20 specialist.

21
22 II

23 The court's jurisdiction is limited to determining
24 whether the SSA's denial of benefits is supported by substantial
25 evidence in the administrative record. 42 USC § 405(g). A
26 district court may overturn a decision to deny benefits only if the
27 decision is not supported by substantial evidence or if the
28 decision is based on legal error. See Andrews v Shalala, 53 F3d

1 1035, 1039 (9th Cir 1995); Magallanes v Bowen, 881 F2d 747, 750
2 (9th Cir 1989). The Ninth Circuit defines "substantial evidence"
3 as "more than a mere scintilla but less than a preponderance; it is
4 such relevant evidence as a reasonable mind might accept as
5 adequate to support a conclusion." Andrews, 53 F3d at 1039.
6 Determinations of credibility, resolution of conflicts in medical
7 testimony and all other ambiguities are to be resolved by the ALJ.
8 See *id*; Magallanes, 881 F2d at 750. The decision of the ALJ will
9 be upheld if the evidence is "susceptible to more than one rational
10 interpretation." Andrews, 53 F3d at 1040.

11 12 III

13 A

14 In 1996, Congress introduced the Personal Responsibility
15 and Work Opportunity Reconciliation Act, which provided the current
16 standard for determining children's eligibility for social security
17 disability benefits. Pub L No 104-193, 110 Stat 2105. A child is
18 otherwise eligible under the Social Security Act "if that
19 individual has a medically determinable physical or mental
20 impairment, which results in marked and severe functional
21 limitations, and which can be expected to result in death or which
22 has lasted or can be expected to last for a continuous period of
23 not less than 12 months." 42 USC § 1382c(a)(3)(C).

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27 Plaintiff contends that Terrell is disabled under the
28 Social Security Act and that the ALJ erred by not considering the

1 effects of ADHD on Terrell's functioning. Specifically, plaintiff
2 argues that Terrell's medical history contradicts the ALJ's
3 conclusion that Terrell did not have ADHD and that the ALJ failed
4 to consider the functional effects of ADHD in combination with all
5 of Terrell's impairments, citing Hammock v Bowen, 867 F2d 1209,
6 1214 (9th Cir 1989) (finding that the ALJ committed legal error by
7 not considering the effects of plaintiff's impairments in
8 combination with each other). After reviewing the record in its
9 entirety, the court determines that substantial evidence supports
10 the ALJ's conclusion that Terrell did not have ADHD and that the
11 ALJ properly considered Terrell's impairments in combination in
12 determining that Terrell is not disabled.

13 For Terrell's condition to meet the SSA's criteria for
14 ADHD, he must have medically-documented marked inattention,
15 impulsiveness and hyperactivity and medically-documented marked
16 impairments in two of following areas: (1) age-appropriate
17 cognitive/communication functioning; (2) age-appropriate social
18 functioning; (3) age-appropriate personal functioning; and (4)
19 ability to maintain concentration, persistence or pace. 20 CFR
20 part 404, subpart P, appendix 1, section A, 112.11.

21 Plaintiff points to the reports of Dr Koulianos and Dr
22 Mountain as evidence that Terrell has ADHD, but these reports do
23 not offer significant support for her position. Dr Koulianos found
24 "no compelling evidence" of ADHD in her January 2002 examination of
25 Terrell, although she did note that plaintiff's description of
26 Terrell's behavior raised a suspicion of ADHD. AR at 321. Dr
27 Koulianos recommended a behaviorally-based management program for
28 Terrell's behavioral difficulties, rather than medication or

1 programs for ADHD. Id. The ALJ noted Dr Koulianos' finding that
2 Terrell's attention and concentration abilities were within normal
3 limits and directly quoted her report's conclusion, specifically
4 made in response to concerns raised by plaintiff during the
5 consultation, that "there is no compelling evidence" to
6 substantiate a diagnosis of ADHD. AR at 233-34. Dr Mountain found
7 that Terrell exhibited symptoms of ADHD in her May 2002
8 examination, but observed that the symptoms were inconsistent given
9 the situation. AR at 328. Dr Mountain recommended that Terrell
10 try medication to treat the symptoms of ADHD and that plaintiff
11 read materials for parents of children with ADHD. AR at 329. The
12 ALJ noted that Dr Mountain found only inconsistent evidence of
13 ADHD. AR at 234.

14 Other evidence in the record also supports the ALJ's
15 determination that Terrell did not have ADHD. Terrell's second
16 grade teacher, in the January 14, 2002, questionnaire she
17 completed, wrote that "Terrell is a normal functioning child who
18 has a short attention span" and Terrell has only "a slight problem"
19 with most attention and focusing tasks. AR at 303, 308. Dr
20 Grossman remarked that Terrell "clearly does not meet the very
21 strict definition of attention deficit disorder either medically or
22 in the listings, either way." AR at 349.

23 The administrative record contains "more than a mere
24 scintilla" of evidence that Terrell did not have marked
25 inattention, impulsiveness or hyperactivity; "substantial evidence"
26 accordingly supports the ALJ's conclusion that Terrell did not have
27 ADHD. Andrews, 53 F3d at 1039.

28 \\\

1 As for plaintiff's contention that the ALJ failed to
2 assess the functional effects of ADHD in combination with Terrell's
3 other impairments, the ALJ did not err since the administrative
4 record supports his conclusion that Terrell did not have ADHD. To
5 the extent Terrell's medical record suggests attention deficit, the
6 ALJ properly considered Terrell's "mild attention deficit" in the
7 determination that Terrell is not disabled. AR at 236.

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10 Plaintiff also contends that the ALJ committed legal
11 error by failing to have Dr Grossman, who testified at the June 27,
12 2002, hearing, evaluate Terrell's entire medical record because Dr
13 Grossman did not review (1) Dr Mountain's May 2002 report or (2)
14 the October 2002 IEP assessment. AR at 353. Plaintiff argues, in
15 essence, that 42 USC § 1382c(a)(3)(I) requires that a pediatrician
16 or other appropriate specialist conduct a new case evaluation every
17 time a minor applicant's medical record changes and that the Ninth
18 Circuit adopted this interpretation of the statute in Howard ex rel
19 Wolff v Barnhart, 341 F3d 1006 (9th Cir 2003).

20 42 USC § 1382c(a)(3)(I) states that in determining the
21 disability of a minor, "the Commissioner of Social Security shall
22 make reasonable efforts to ensure that a qualified pediatrician or
23 other individual who specializes in a field of medicine appropriate
24 to the disability of the individual (as determined by the
25 Commissioner of Social Security) evaluates the case of such
26 individual."

27 In Howard, the Ninth Circuit interpreted this provision
28 to require that the ALJ have a pediatrician or other appropriate

1 specialist review a minor's medical record "in its entirety" and
2 form a case evaluation from this review, although this requirement
3 appears to be somewhat flexible as to when such review must take
4 place. Howard, 341 F3d at 1014. Specifically, the Ninth Circuit
5 stated that the ALJ in Howard may have "achieved substantial
6 compliance with the statute" by having two physicians form case
7 evaluations fifteen and twenty-five months, respectively, before
8 the ALJ handed down his decision. Id. Neither physician reviewed
9 new developments in the applicant's medical record after completing
10 the case evaluation. Id at 1009-1010. Although the Ninth Circuit
11 noted uncertainty whether the physicians were appropriate
12 specialists within the meaning of the 42 USC § 1382c(a)(3)(I), the
13 court stated that the requirements of the statute were otherwise
14 satisfied. Howard, 341 F3d at 1014. Since the Ninth Circuit could
15 not determine whether the two physicians were pediatricians or
16 other appropriate specialists, the court remanded the case to the
17 ALJ for further proceedings. Id at 1015.

18 Unlike in Howard, the ALJ in this case had an appropriate
19 specialist, Dr Grossman, review Terrell's medical records. AR at
20 348-53. Plaintiff does not dispute that Dr Grossman is a
21 pediatrician within the meaning of 42 USC § 1382c(a)(3)(I).
22 Rather, plaintiff contends that 42 USC § 1382c(a)(3)(I) requires Dr
23 Grossman or another appropriate specialist to review Terrell's
24 entire medical record as it develops. Such an interpretation of 42
25 USC § 1382c(a)(3)(I) does not find support in the language of the
26 statute or the Ninth Circuit's interpretation of the statute in
27 Howard. The statute requires only that a pediatrician or other
28 appropriate specialist "evaluate[] the case" of the minor

1 applicant; the statute does not require that a new case evaluation
2 be developed after every addition to the applicant's medical
3 record. The Ninth Circuit held that a pediatrician or other
4 appropriate specialist must review the applicant's medical record
5 "in its entirety," but allowed that the ALJ may "achieve
6 substantial compliance" with 42 USC § 1382c(a)(3)(I) by having a
7 pediatrician or other appropriate specialist develop a case
8 evaluation from less than the applicant's entire medical record.
9 Howard, 341 F3d at 1014.

10 If the ALJ in Howard "achieved substantial compliance"
11 with 42 USC § 1382c(a)(3)(I) by having physicians review the
12 applicant's case fifteen and twenty-five months prior to handing
13 down his decision, the ALJ in this case certainly achieved
14 "substantial compliance" with the statute by having Dr Grossman
15 review Terrell's entire medical record available before the June
16 27, 2002, hearing, which was held five months before the ALJ handed
17 down his decision. To find otherwise would be to impose on the SSA
18 the burden of having a pediatrician or other appropriate specialist
19 review each minor applicant's entire medical record every time a
20 new report or other development occurred. Such a requirement would
21 substantially increase the length and cost of determining whether a
22 minor is disabled within the meaning of the Social Security Act.
23 Each new medical report could delay the ALJ's determination and
24 require further proceedings.

25 In this case, moreover, the argument for a new case
26 evaluation is particularly unpersuasive because the conclusions set
27 forth in the reports of Dr Mountain and Dr Koulianos are
28 substantially similar. When new reports substantially deviate from

1 previous reports, the applicant may present the new report to the
2 Appeals Council, as plaintiff did in this case. AR 192-93.
3 Accordingly, the court holds that the ALJ did not commit legal
4 error when he refused to have Dr Grossman conduct another case
5 evaluation after Dr Mountain's report became available.

6 Similarly, the ALJ did not err by failing to have Dr
7 Grossman review the October 23, 2002, IEP assessment. Plaintiff
8 submitted the IEP assessment to the Appeals Council on January 16,
9 2003, over one month after the ALJ rendered his decision on
10 December 5, 2002. AR at 194, 230-37. The administrative record is
11 silent on whether the ALJ even had notice of the assessment.
12 Accordingly, it was reasonable that the ALJ did not have Dr
13 Grossman review the assessment.

14
15 IV

16 For the foregoing reasons, the court affirms the ALJ's
17 decision to deny benefits. Accordingly, the court DENIES
18 plaintiff's motion for summary judgment and GRANTS defendant's
19 motion for summary judgment.

20 The clerk shall enter judgment in accordance with this
21 order and close the file.

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23 IT IS SO ORDERED.

24 
25

26 VAUGHN R WALKER

27 United States District Chief Judge
28